COMPLIANCE BOARD OPINION NO. 95-1

April 13, 1995

Dr. Raymond F. Altevogt

The Open Meetings Compliance Board has considered your complaint dated February 7, 1995, in which you allege that the City Council of Takoma Park does not comply with the provisions of the Open Meetings Act that require certain disclosures about closed meetings.

As the Board understands your complaint, you allege that the City Council provides insufficient information about meetings that are closed to discuss litigation or the purchase of property. You comment that you are "not asking to learn of the `nature' of the actions in executive session. I am asking to know *what litigation* or *what property* was included in discussion.... I believe the requirement to `list the topics to be discussed' is not being [met] ...."

In a timely response on behalf of the City Council, Susan Silber, Esquire, the Corporation Counsel, asserts that "Dr. Altevogt's complaint is without merit and that the current practices of the City Council of Takoma Park comply with the requirements of the Open Meetings Act." Ms. Silber acknowledges that the minutes of the next open session "simply state, for example, that the Council discussed `land acquisition ...', but do not identify the specific property which was the topic of the discussion." Ms. Silber contends, however, that the Open Meetings Act "does *not* require the City Council minutes for prior executive sessions to identify the specific property. In fact, a requirement to publicly identify the property the City is considering acquiring might imperil the City's opportunity to acquire that real property or harm the City's negotiating position."

The Open Meetings Act contains three disclosure requirements about a closed session: the notice of the meeting, a written statement made prior to closing the meeting, and certain information about the closed meeting appearing in the minutes of the next open meeting.

The notice of a closed meeting need only include its date, time, and place. §10-506(b)(2). While the Compliance Board encourages public bodies to provide a more detailed description of a meeting's expected agenda, the Act does not require that additional detail. *See* Compliance Board Opinions No. 94-1, at 2 (March 22, 1994) and 92-5, at 3 (December 22, 1992).

The written statement made prior to the closing of a session must contain "a listing of the topics to be discussed." §10-508(d)(2)(ii). In Compliance Board Opinion No. 93-2 (January 7, 1993), the Board described its view of this provision as follows:

> While the Act surely does not require that a public body disclose in the written statement sensitive information that the Act permits to be discussed in closed session, the written statement ought to apprise those in attendance of the basis for invocation of the particular exception that is cited. So, for example, if the [County] Commissioners were planning to gain the legal advice of the County Attorney about a settlement proposal in pending litigation, the written statement should say so, unless the very fact of the offer having been made was sensitive. While the level of detail necessarily will vary from one meeting to the next, the Compliance Board believes that the use of an uninformative boilerplate statement of reasons does not comply with §10-508(d)(2).

Opinion No. 93-2, at 4.

The City Council of Takoma Park seemingly agrees with this interpretation, because its form contains blank space for the insertion of "topics discussed"; this part of the form would be unnecessary if it were intended to contain no more than a reiteration of the text of the statute, because the form also contains a check-list for the Council to indicate the statutory basis for closing a session. We have already determined that this form complies with the Open Meetings Act. Compliance Board Opinion No. 94-4, at 2 (July 18, 1994).

The Act does not require the account of the topic to reveal confidential facts: "The level of detail in the written statement prior to a closed session ... may preserve the confidence of information that led to the session's being closed in the first place." Compliance Board Opinion No. 92-5, at 2-3. In the case of a session closed to discuss a litigation matter, the City Council often ought to be able to identify the particular case as the "topic" of the closed session, without going into more detail about the particulars of the case. With regard to land acquisitions, the identification of the particular property might well often constitute sensitive information that the Act permits to be discussed in closed session and that, therefore, need not be disclosed in the written statement.

Given the general nature of your complaint, the Compliance Board is unable to express an opinion about the application of these guidelines to particular past instances. The Board does not agree with your contention, however, that the Act generally requires identification of the property to be acquired.

The Board has taken the same approach to post-session disclosure in the minutes of the next open meeting. *See* Compliance Board Opinion No. 92-5, at 2-3. This disclosure must include "a listing of the topics of discussion ... and each action taken during the session." §10-509(c)(2)(iv). The purpose of this provision is to enable "interested members of the public ... to find out the basics of what happened at a closed session." Compliance Board Opinion No. 94-2, at 4 (May 9, 1994). At the same time, a public body is not obliged to disclose information that falls within the scope of an exception permitting a closed session. The Attorney General gave the following example: "Suppose ... that a public body closed a session to seek advice from its counsel about a settlement proposal in pending litigation. The statement in the minutes of the next open meeting need not disclose the nature of the proposal or the exact response of the public body." Office of the Attorney General, *Open Meetings Act Manual* 19 (1992).

The same analysis applies to meetings that are closed to "consider the acquisition of real property for a public purpose and matters directly related thereto." §10-508(a)(3). Discussions of this kind often involve "genuinely sensitive issues," as the Attorney General observed. *Open Meetings Act Manual* at 22. If disclosure of the fact that a particular property was under consideration for acquisition would potentially affect the price to be paid for the property or otherwise adversely affect the City in its property acquisition efforts, the publicly available minutes need not reveal that particular detail.

Again, because of the general nature of your complaint, the Compliance Board cannot state whether the City Council's decision in particular past instances to refrain from disclosing the specific identification of property comported with this standard. But there is no fixed requirement that the Council do so in every instance, regardless of the impact of disclosure.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb